

BOARD OF COUNTY COMMISSIONERS, WASHOE COUNTY, NEVADA

TUESDAY

6:00 P.M.

APRIL 21, 2009

PRESENT:

David Humke, Chairman
Bonnie Weber, Vice Chairperson
Bob Larkin, Commissioner
Kitty Jung, Commissioner
John Breternitz, Commissioner

Amy Harvey, County Clerk
Katy Simon, County Manager
Melanie Foster, Legal Counsel

The Board convened in special session at 6:02 p.m. in the Ranch House at Rancho San Rafael Regional Park, 1595 North Sierra Street, Reno, Nevada. The Clerk called the roll and the Board conducted the following business:

Katy Simon, County Manager, stated: "The Chairman and the Board of County Commissioners intend that their proceedings should demonstrate the highest levels of decorum, civic responsibility, efficiency and mutual respect between citizens and their government. The Board respects the right of citizens to present differing opinions and views, even criticism, but our democracy cannot function effectively in an environment of personal attacks, slander, threats of violence, and willful disruption. To that end, the Nevada Open Meeting Law provides the authority for the Chair of a public body to maintain the decorum and to declare a recess if needed to remove any person who is disrupting the meeting, and notice is hereby provided of the intent of this body to preserve the decorum and remove anyone who disrupts the proceedings."

09-382 AGENDA ITEM 4 – COMMUNITY DEVELOPMENT

Agenda Subject: "Review and discussion with possible modification and/or approval of staff recommendations to the Draft Administrative Enforcement Ordinance; possible direction to return the Draft Ordinance for a first reading at a future County Commission Meeting; and, other direction as appropriate. (All Commission Districts)"

The following individuals were in attendance to present information and/or to answer questions: Dave Childs, Assistant County Manager; Blaine Cartlidge, Deputy District Attorney; Lance Allen, Executive Director of the Neighborhood Mediation Center; Jeanne Rucker, Environmental Health Specialist Supervisor for the District Health Department; Mitch Schneider, Field Supervisor for Regional Animal Services; Don Jeppson, Director of Building and Safety; Adrian Freund, Director of

Community Development; Bob Webb, Program Manager for Community Development; and Bert Bracy, Code Enforcement Officer for Community Development.

Mr. Childs indicated a Citizen Committee was put together in early 2007 to work on two documents – an Administrative Enforcement Ordinance to deal with compliance and a Nuisance Ordinance to deal with the County's various codes and ordinances for different types of nuisances. He noted the agenda item dealt only with the Administrative Enforcement Ordinance. He explained County staff currently investigated nuisances such as barking dogs or trash in someone's yard after receiving complaints. He stated 95 to 97.5 percent of the incidents were resolved within 30 days and the current process was to go to Justice Court to resolve the remaining cases. He noted the proposed enforcement process was developed after looking at best practices in other jurisdictions. The process included steps such as mediation and hearings before an administrative hearing officer, with the ultimate goal of achieving compliance without creating a misdemeanor record. He said there had been many different opinions among members of the Citizen Committee, but they were able to reach a consensus. He observed there were many Committee members present to answer questions or engage in dialogue with the Board.

Mr. Childs stated email had been circulated alleging the proposed process encouraged the taking of property. He emphasized the County was trying to do just the opposite by decriminalizing the process and by facilitating compliance. He indicated there was a provision for an abatement process that was only to be used after other measures had failed. The process allowed recovery of clean-up costs and could result in a lien against property. He noted the County would not foreclose against property, but would collect on its lien when a property was sold, refinanced or transferred in ownership.

Mr. Cartlidge reviewed a flow chart entitled "Administrative Enforcement Time Line," which was placed on file with the Clerk. He noted County departments would have the option to pursue administrative enforcement or criminal enforcement. He discussed the steps for the proposed administrative process that were shown on the flow chart. He pointed out Commissioners could take action through the Chair to remove a case from an administrative hearing officer and conduct a hearing before the Board of County Commissioners. He stated decisions by an administrative hearing officer or by the County Commission were appealable directly to the Second Judicial District Court. He discussed remedies that could be exercised by the County if compliance was not achieved at each step in the process, as well as additional noticing and hearing requirements. He said the County would not recover abatement costs through the tax delinquency process if the abatement was less than \$5,000. He emphasized abatement was to be used as a last resort or in situations where there was serious risk to public health, safety or welfare.

Mr. Allen stated the Neighborhood Mediation Center proposed the use of a model similar to what was already in place for Animal Control. He noted the Mediation Center was an independent entity that had no enforcement capability. He said mediation

was designed to facilitate communication, identify what issues needed to be resolved, and to help each of the parties look at resolutions that might work well for everyone. He indicated the complaining party and the party complained against were both asked to participate. He observed there were other remedies available under the ordinance if mediation failed.

Commissioner Jung asked whether mediation was voluntary. Mr. Allen stated it could be mandatory for both parties to go to mediation, with some penalty if they chose not to participate. Mr. Webb clarified there was a voluntary step early in the process that allowed mediation at the request of the parties, but mediation could also be ordered by the Board of County Commissioners or by a hearing officer later in the process.

Commissioner Weber wondered how many cases there had been in the last five years where the County actually had to go in and clean up a property. Mr. Webb indicated that had recently been done in one case in Sun Valley after a judge declared a public nuisance and ordered abatement, but it was the first case through Community Development that he knew of in the last ten years. He noted there were probably three or four cases each year that might rise to such a level. Ms. Rucker said the Health Department probably had two or three cases per year where the problem remained unresolved after going through the court system.

The following members of the Citizen Committee introduced themselves and were invited to make comments to the Board: Francine Donshick, District 3/North Valleys; Sharalyn Barney, District 5/North Valleys; Dennis Magers, District 4/Spanish Springs; John Sell, District 1/Crystal Bay; Katie Stevens, District 1/Southwest Reno; Lois Kolbet, District 4/Palomino Valley; Dave Huess, District 5/Verdi; and Matthew Ebert, District 5/Gerlach-Empire.

Ms. Barney discussed the Committee process. She did not feel the facilitator who ran the meetings had been impartial and she believed the final product might have been different if the Committee had been allowed free discussion. She indicated some things taken out of the Ordinance by the Committee were put back in by staff. Consequently, she noted the Committee dealt repeatedly with some of the same issues, such as the taking of property. She expressed concern about adequate time limits for compliance, particularly during periods of inclement weather. She said there were many who did not want to impose "city" regulations on rural areas and disagreed with the concept of modeling what other communities had done. She stated there were several factions within the Committee, including a conservative group that preferred little or no controls.

Mr. Sell thought the Committee members and the County staff did a great job on a difficult task. He said he participated in the group that drafted the Nuisance Ordinance. He questioned whether the Justice Court system would be playing too diminished of a role, and pointed out it approached issues in a more relaxed and informal

manner than the District Court. He suggested some of the things in the Nuisance Ordinance might warrant a more proactive approach.

Mr. Huess agreed with the comments expressed by others. He complimented the Board on the concerns they had expressed to staff during the process.

Ms. Kolbet noted she was elected as Committee Chair after the facilitator was lost due to budget cuts. She acknowledged some miscommunication about revisions, but indicated the staff generally did a great job. She stated the increasing number of foreclosures and vacant properties in the area had raised a number of previously unanticipated issues. She observed the Draft Ordinance attached to the staff report identified Committee recommendations and staff recommendations for each section.

Mr. Ebert said he was concerned about departments choosing to allow complainants to remain anonymous, and feared some people would use the system as a weapon in neighborhood or personal disputes. He stated it would be better to go to a proactive system and have the County seek out violations.

Bill Fine, Katherine Snedigar, Sharon Spencer, Gary Schmidt, Juanita Cox and Jutta Recktenwald responded to the call for public comment. Mr. Fine and Ms. Recktenwald were pleased to see the process decriminalized. Mr. Fine hoped there would not be too much time allowed between each step of the process. Ms. Snedigar and Ms. Spencer asserted County Development Code did not apply to agricultural properties in Palomino Valley unless there was a health, safety or welfare problem. Mr. Schmidt described the Committee process as disorganized and said most public nuisance violations were images of the eye rather than hazards to life and safety. He complained that Committee members were given five minutes to speak rather than the two minutes allowed under public comment. He suggested State law provided for the appeal of land use issues to the Board of Adjustment (BOA). Ms. Cox placed a copy of her written comments on file with the Clerk. She believed the administrative process was unconstitutional, denied people their due process, and should be limited to cases related to the health, safety and welfare of a majority of the citizens. Ms. Recktenwald expressed concern about those who were traveling and might not receive notice in time to remedy their problems within 30 days.

Commissioner Jung asked whether code enforcement was a revenue generator or was generally subsidized by the taxpayer. Mr. Webb indicated penalties and administrative fees in Community Development were limited to recovering costs for things such as mailing, publishing notices and recording documents. He stated the true administrative costs were never recovered.

Commissioner Jung noted the City of Reno was proactive in its code enforcement, whereas Washoe County was reactive. She wondered how many code enforcement officers there were in the County. Mr. Webb said Community Development had three officers to handle land use, zoning and business license enforcement. Ms. Rucker stated there was a staff of 75 people in the Health Department who worked in

some enforcement capacity. She indicated issues involving the nuisance ordinance would fall primarily under the waste management program, which was limited to ten staff members. Mr. Schneider said there were 20 enforcement officers in Animal Services who were currently unable to keep up with the number of complaints received. Mr. Jeppson identified seven staff members in Building and Safety whose primary duties were related to new development, and who probably spent less than 10 percent of their time on code enforcement issues.

Commissioner Breternitz questioned whether the County Commission could select the Justice Court rather than the District Court for appeals to the administrative process. Melanie Foster, Legal Counsel, explained the Justice Courts would not have jurisdiction over such appeals.

Commissioner Breternitz asked whether complainants would be required to sign a form. Mr. Webb stated the question of the complainant's anonymity was handled as a policy issue by each agency. He noted Community Development accepted complaints by phone, email or in writing, and allowed anonymous complaints, but other agencies had their own procedures.

Commissioner Breternitz wondered whether the County had the authority to put an appeal mechanism into place other than the BOA. Mr. Cartlidge explained there were statutes in NRS 278, as well as certain other regulations that dealt with land use and structures. He stated appeals that went to the BOA typically contested land use decisions in the context of new development and building structures. He indicated NRS 244 contained a set of statutes dealing with the regulation and enforcement of nuisances, and authority was granted for the County to adopt ordinances that created a system of enforcement. He noted work was currently being done in the Legislature that might grant further authority to the County.

Commissioner Breternitz said it was his understanding the process gave staff some discretion with time limits. He asked what would happen if someone was traveling and did not receive their notice by mail. Mr. Webb explained the current process did not allow an enforcement official to proceed unless they could deliver notice of a violation to someone such as a tenant or property owner. He stated continuation of timelines based on extenuating circumstances was built into the Administrative Enforcement Ordinance. Mr. Jeppson pointed out enforcement officials could expand the timeframes when necessary because it was difficult to get in touch with residents who were seasonal, such as many of those who lived at Incline Village. He indicated flexibility was necessary because the ultimate goal was to get compliance and take care of the problem.

Commissioner Weber thanked the Committee members for their efforts. She said the Committee process was instituted because there were different types of communities in Washoe County and many sides to every story that should be considered.

Chairman Humke referenced Ms. Kolbet's comments about foreclosure issues. He asked whether real estate owned by a bank would be treated any differently than real estate owned by any other citizen. Mr. Webb replied that an owner was an owner, regardless of what type of entity they were. He stated there was currently about a 60 percent success rate in getting in touch with companies to have them rectify problems with their property. He acknowledged things sometimes got lost in the corporate maze.

Chairman Humke requested clarification as to the possibility of complainants remaining anonymous. Mr. Webb pointed out the Administrative Enforcement Ordinance did not deal with proactive versus reactive enforcement, nor with allowing or not allowing anonymous complainants. He emphasized such matters were policy decisions that could be made by the Board of County Commissioners and the District Board of Health. Mr. Cartlidge indicated there were legal requirements to maintain the confidentiality of a criminal complainant until a criminal investigation and case was concluded. He stated the County's government file became public after a criminal case was completed and the appeal process was done. In the civil context, he noted the law did not allow the name on a complaint to be kept confidential.

Chairman Humke wondered about the policy implications of allowing an anonymous person to complain about their neighbor and thereby set so many wheels of government into action. Mr. Cartlidge acknowledged there were pros and cons. On the pro side, he stated a complaint driven system did not require a host of inspectors to be out surveying property every day. He indicated the acceptance of anonymous complaints allowed the County to be more aware of problems in the community that could be addressed. On the con side, he noted anonymity motivated a lot of people to just send in complaints and there might be no witness to prove a case if code enforcement personnel did not arrive in time to witness some types of violations. Mr. Jeppson explained the Building and Safety department received complaints about illegal grading, building and diversion of water. He said such items could be serious and he preferred anonymity as an option. He indicated his department wanted to know about problems so that it could inspect and investigate the validity of each complaint.

Commissioner Breternitz asked whether the system was strictly complaint driven or whether staff could initiate a process if they saw something obvious. Mr. Webb reiterated the process outlined in the Ordinance was simply an enforcement tool and was independent of each department's proactive versus reactive policy. He said Community Development was currently complaint driven. He stated staff members would address a blatant violation if they witnessed something while on another case, but might wait to receive a complaint if they witnessed something when driving home from work. Ms. Rucker indicated the Health Department accepted anonymous complaints in situations where there were life safety issues, but required the complainant's name in other cases, particularly with the types of solid waste complaints that were expected to go through the proposed administrative enforcement process. She pointed out many such complaints were the result of neighborhood disputes, and the Health Department had gone to the same property numerous times and found no violation. She observed the resources for proactive investigation were no longer available. Mr. Schneider explained Animal

Control would investigate anonymous complaints related to public safety or animal welfare issues. He said they also utilized law enforcement software that allowed staff to check for any history of unfounded complaints. He noted the agency would send an educational letter containing helpful tips and information about the law after receiving barking dog complaints, even those that were anonymous. After that, he stated they would not move forward with an anonymous complaint because officers could not attest to what was annoying to someone else. He said Animal Control received 3,000 to 4,000 noise-related complaints per year.

Chairman Humke observed most of the concerns and questions he had expressed throughout the draft process were being dealt with in some manner, including: anonymity of the complainant, right of entry to a property through a search warrant, the appeal process, training of hearing officers, and possible conflict of interest for any agency assessing fees or civil fines.

Commissioner Breternitz moved to approve the recommendations as presented in the staff report and to bring the Administrative Enforcement Ordinance back to the Commission for first reading and possible future adoption. The motion failed for lack of a second.

Commissioner Jung indicated she was still not fully convinced about the anonymity issue, and wanted staff to do more research and make more recommendations. She wondered how to get to something solid that would not turn into an anonymous tool used by neighbors to beat each other up. She said she liked the direction staff was going in working more toward compliance and in helping people with mediation. She stated the bare bones were there and she did not believe it was necessary to go back to the Citizen Committee. She suggested staff take the feedback that had been provided by Committee members, the public and the Commissioners, and bring the Ordinance back to the Board; not at a workshop, but at a formal meeting that would allow the Board to work through the issues with the citizens point by point prior to an actual public hearing. She noted it was incumbent on staff and the County Commissioners not to use the enforcement process as a tool to punish the 95 to 97 percent of residents who did just fine with their property. She emphasized the importance of underlining the more chronic nuisances that became public health and safety issues, and pointed out beautification was very subjective.

Chairman Humke explained he did not second Commissioner Breternitz's motion because the material was voluminous. He indicated more time was necessary for Commissioners to understand the Draft Ordinance, digest the Citizen Committee approved recommendations, and determine how those had been modified by staff recommendations. He noted the matrix in the staff report was very good, but the County would be living with the Ordinance for a while. He said he also had reservations about anonymous complainants. He stated it was appropriate to act on a life safety violation if it was witnessed by a public officer of Washoe County or brought forward by an anonymous complainant, but he otherwise did not care for the anonymity. He suggested there was a basis for melding some of the concepts and procedures discussed by the

various departments. He brought up the possibility of tracking “frequent flyer” complainants and including a section in the Ordinance to deal with harassment or vexatious complainants. Although he did not know what kind of sanctions might be appropriate, he stated that might provide some balance.

No action was taken on this item.

09-383 AGENDA ITEM 3 – PUBLIC COMMENT

Agenda Subject: “Public Comment. Comment heard under this item will be limited to two minutes per person and may pertain to matters both on and off the Commission agenda. The Commission will also hear public comment during individual action items, with comment limited to two minutes per person. Comments are to be made to the Commission as a whole.”

Gary Schmidt complained about abuses by complainants.

Katherine Snedigar noted the sections of NRS 278 pertaining to land use that were cited by staff were related to new development, not to changing the rules for existing subdivisions. She suggested the proposed Administrative Enforcement Ordinance would result in the taking of lifestyles, the taking of the use of property, and the devaluation of land values.

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7:50 p.m. There being no further business to come before the Board, on motion by Commissioner Jung, seconded by Commissioner Weber, which motion duly carried, the meeting was adjourned.

DAVID E. HUMKE, Chairman
Washoe County Commission

ATTEST:

AMY HARVEY, County Clerk
and Clerk of the Board of
County Commissioners

Minutes Prepared by: Lisa McNeill, Deputy County Clerk